

INSURANCE CODE

TITLE 5. PROTECTION OF CONSUMER INTERESTS

SUBTITLE F. INSURANCE FRAUD AND IDENTITY THEFT

CHAPTER 705. MISREPRESENTATIONS BY POLICYHOLDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 705.001. DEFINITION. In this subchapter, "insurance policy" means a contract or policy of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.002. APPLICABILITY OF SUBCHAPTER. Except as provided by Section 705.005, this subchapter applies to each insurance policy issued or contracted for in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.003. POLICY PROVISION: MISREPRESENTATION IN PROOF OF LOSS OR DEATH. (a) An insurance policy provision that states that a misrepresentation, including a false statement, made in a proof of loss or death makes the policy void or voidable:

- (1) has no effect; and
- (2) is not a defense in a suit brought on the policy.

(b) Subsection (a) does not apply if it is shown at trial that the misrepresentation:

- (1) was fraudulently made;
- (2) misrepresented a fact material to the question of the insurer's liability under the policy; and
- (3) misled the insurer and caused the insurer to waive or lose a valid defense to the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.004. POLICY PROVISION: MISREPRESENTATION IN POLICY APPLICATION. (a) An insurance policy provision that states that false statements made in the application for the policy or in the policy make the policy void or voidable:

- (1) has no effect; and
- (2) is not a defense in a suit brought on the policy.

(b) Subsection (a) does not apply if it is shown at trial that the matter misrepresented:

(1) was material to the risk; or

(2) contributed to the contingency or event on which the policy became due and payable.

(c) It is a question of fact whether a misrepresentation made in the application for the policy or in the policy itself was material to the risk or contributed to the contingency or event on which the policy became due and payable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.005. NOTICE TO INSURED OF MISREPRESENTATIONS. (a) This section applies to any suit brought on an insurance policy issued or contracted for after June 29, 1903.

(b) A defendant may use as a defense a misrepresentation made in the application for or in obtaining an insurance policy only if the defendant shows at trial that before the 91st day after the date the defendant discovered the falsity of the representation, the defendant gave notice that the defendant refused to be bound by the policy:

(1) to the insured, if living; or

(2) to the owners or beneficiaries of the insurance policy, if the insured was deceased.

(c) This section does not:

(1) make available as a defense an immaterial misrepresentation; or

(2) affect the provisions of Section 705.004.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. SPECIAL PROVISIONS RELATED TO LIFE, ACCIDENT, AND HEALTH INSURANCE POLICIES

Sec. 705.051. IMMATERIAL MISREPRESENTATION IN LIFE, ACCIDENT, OR HEALTH INSURANCE APPLICATION. A misrepresentation in an application for a life, accident, or health insurance policy does not defeat recovery under the policy unless the misrepresentation:

(1) is of a material fact; and

(2) affects the risks assumed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. SPECIAL PROVISIONS RELATED TO LIFE INSURANCE POLICIES

Sec. 705.101. DEFINITION. In this subchapter, "insurance policy" means a contract or policy of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any insurance policy issued or contracted for in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.103. DOCUMENTS TO ACCOMPANY POLICY. Except as otherwise provided by this code, a life insurance policy must be accompanied by a copy of:

(1) the policy application; and

(2) any questions and answers given in connection with the application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.104. MISREPRESENTATION IN APPLICATION FOR LIFE INSURANCE. A defense based on a misrepresentation in the application for, or in obtaining, a life insurance policy on the life of a person in or residing in this state is not valid or enforceable in a suit brought on the policy on or after the second anniversary of the date of issuance of the policy if premiums due on the policy during the two years have been paid to and received by the insurer, unless:

(1) the insurer has notified the insured of the insurer's intention to rescind the policy because of the misrepresentation; or

(2) it is shown at the trial that the misrepresentation was:

(A) material to the risk; and

(B) intentionally made.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.105. APPLICABILITY OF OTHER LAW. Subchapter A does not apply to a life insurance policy:

(1) that contains a provision making the policy incontestable after two years or less; and

(2) on which premiums have been duly paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.